

This letter discusses whether the contractual agreement between a vendor and its customers to install blinds, shutters, roman shades and cornice boards constitutes a construction contract. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a PLR).

October 7, 2005

Xxxxx:

This letter is in response to your letter dated March 16, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to CLIENT for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither CLIENT nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, we are requesting a Private Letter Ruling regarding the application of the Illinois Revised Statutes to CLIENT's installation of Blinds, Shades, Roman Shades and Upholstered Cornices herein after referred to as "blinds". This ruling request is being made pursuant to 2 Ill. Adm. Code 1200.110. A properly executed Power of Attorney is attached.

Statement of Fact

CLIENT provides and installs various forms of window treatments. In addition, CLIENT makes retail sales of some of the products described herein; however, those sales are not the subject of this request. In addition, sales of draperies and curtains, as defined in regulation section 130.2140, are not a part of this request.

CLIENT markets its products through store fronts and in home sales representatives. Many times the customer will request the products be installed in their business or residence. When such services are requested we believe CLIENT is acting as

construction contractor and as such incurs tax based on their cost price of materials permanently incorporated into the customer's realty.

When CLIENT agrees to furnish and install blinds, shutters, roman shades or cornice boards it enters into a contractual relationship with the customer utilizing the form noted as Exhibit A which is attached to this ruling request. As noted in the Terms and Conditions of this contract, CLIENT is contractually required to furnish and install the materials detailed on pages one through five. Installation is done in accordance with the manufacturer's installation guidelines. Copies of the installation instructions from four major suppliers are attached as Exhibits B, C, D, E, F, G, H, I and J. As may be seen from these instructions the installation of all these products requires them to be permanently affixed to the businesses / residence in which the installation is taking place. Generally, this is done by affixing brackets to the window opening using screws which are driven into the window header and jambs.

Tax Period and Audit / Litigation History

CLIENT is not currently the subject of any audit activity by the department nor does it have pending litigation before the department on this issue.

Relevant Documents

Attached to and made a part of this request are the following documents.

- Five part contractual agreement titled "Cost Estimate for the Supply and Installation of Blinds and/or Shutters". Please make note of the back side of this form titled "Terms and Conditions of Contract". (Exhibit A)
- Installation instructions for Hunter Douglas Rectangular Shades. (Exhibit B)
- Installation instructions for Hunter Douglas Wood Blinds. (Exhibit C)
- Installation for Comfortex Sheer Horizontal Window Shadings. (Exhibit D)
- Installation instructions for Comfortex Cellular Shades. (Exhibit E)
- Installation instructions for Vinybilt Shutters. (Exhibit F)
- Installation instructions for Lafayette Wood Shutters. (Exhibit G)
- Installation instructions for Hunter Douglas Vertical Blinds (Exhibit H)
- Installation instructions for Lafayette Roman Shades. (Exhibit I)
- Installation instructions for Hartman & Forbes Cornice Boards. (Exhibit J)

Previous Ruling Request

Neither CLIENT nor FIRM has previously requested a ruling for CLIENT on this matter nor has a ruling requested on the behalf of CLIENT been submitted and then withdrawn.

Statement in Support of Taxpayers Views

Regulation Section 130.1940 states that a construction contractor does not incur Retailers Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as incident to a construction contract. In such a case the construction contractor incurs Use Tax on the cost price of the tangible personal property that is incorporated into real estate.

The installation of products similar to the products which are the subject of this ruling request appear to have been the subject of previous ruling request from companies other than CLIENT. In ST 04-0151-GIL the department confirms that when blinds are permanently affixed pursuant to a construction contract the tax base is the contractor's cost price of materials. In ST 02-0231-GIL the department affirms that blinds attached to a structure using pop rivets constitutes being permanently affixed. Letter Ruling 87-0625 appears to be on point regarding the requestor's installation of blinds or window shades as described in paragraph five of that letter. Additional letter rulings relevant to this request are 87-0623 and 87-0429.

Further support for the taxpayer's position may be found in the following court cases.

- G.S. Lyons & Sons Lumber and Manufacturing Company v. Department of Revenue, 23 Ill.2d 180
- J.H. Walters & Co. v. Department of Revenue, et al, 44 Ill.2d 95
- Illinois Valley Paving v. Department of Revenue, 4th District, Appellate Court

Statements Contrary to Taxpayers Views

We are not aware of any authorities contrary to taxpayers view.

Trade Secrets

This request for ruling does not contain any trade secrets which must be redacted from public view.

Conclusion

We believe when CLIENT enters into a contractual agreement with its customers to install blinds, shutters, roman shades and cornice boards that agreement constitutes a construction contract. The tangible personal property transferred pursuant to that construction contract is permanently affixed to the customer's realty. As such, we believe CLIENT's tax base in these transactions is CLIENT's cost price of tangible personal property incorporated into the customer's real estate.

Should you or your staff have any additional questions regarding this request please contact me.

Department's Response:

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department. The customers of construction contractors incur no Use Tax liability, and the construction contractors have no legal authority to collect the Use Tax, as such, from their customers.

The Department's regulations regarding the tax liabilities of construction contractors in Illinois are set forth at 86 Ill. Adm. Code 130.1940 and 130.2075. Section 130.1940 provides in part that:

"[a] construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. The construction contractor incurs Use Tax on the cost price of the tangible personal property that is incorporated into real estate. (See also Section 130.2075 of the Part.)

1) For example, a construction contractor does not incur Retailers' Occupation Tax liability on receipts from selling and installing screen doors and windows; storm doors and windows; weather stripping; insulation material; Venetian blinds; window shades, awnings; cabinets built into the structure; floor coverings cemented or otherwise permanently affixed to the structure...."

Section 130.2075(a)(2) provides that:

"[w]hen the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what such construction contractor pays for the item. When the construction contractor/installer (whether he is the prime contractor or a subcontractor) is also the manufacturer of the finished item that he will incorporate into real estate for his customer, the tax base is what such construction contractor pays for the materials that he incorporates into such finished item, plus whatever such construction contractor may pay for nails, screws or other items of tangible personal property that he buys and incorporates into real estate for his customer in the course of making the installation of the finished item."

For purposes of the Illinois sales tax laws, the Department uses an intention test to determine whether items remain tangible personal property after installation or become part of realty. If circumstances indicate that the parties obviously intended that the item remain with the realty, we give effect to that intention. If an obvious intent is not apparent, we look to the extent to which the item has been affixed. If the item cannot be removed without damage to the item or to the real estate, that is an indication that the parties intended that the item become part of the realty.

The "Terms and Conditions of Contract" (Exhibit A) used when CLIENT enters into a contractual relationship with the customer to furnish and install blinds, shutters, Roman shades, and cornice boards ("window treatments") indicates that the parties intend for the window treatments to become part of the realty. Section 3.D. of the contract states in part that "[t]he Customer acknowledges the blinds and/or shutters to be permanently installed in the Customer's residence and/or place of business are made-to-order for the Customer's residence and/or place of business and are not suitable for installation in other residences and/or places of business." The contract also specifies in Section 8 that "[t]he Customer grants CLIENT's a security interest in the blinds and shutters to be installed pursuant to this Agreement to secure the unpaid balance of the Total Contract Price. CLIENT's shall have all the rights of a secured party under the applicable state Commercial Code, and the materials to be supplied and installed...shall remain the property of CLIENT's until the Total Contract Price has been fully paid." The contract for sale does not indicate that the seller will repossess the blinds in the event of non-payment. Rather, in cases of nonpayment, the contract

requires the customer to grant CLIENT a security interest in the window treatment. This is an indication that the parties intend that the blinds will become part of the real estate.

In regard to whether or not the window treatments can be removed without damage to either the window treatments or to the real estate, the installation and care instructions provided (Exhibits B-J) indicate that none of the window treatments could be removed without causing damage to the real estate. This is because the window treatments are installed by affixing brackets to the window opening using screws that are driven into the window header and jambs. This is an indication that the blinds are permanently installed and are intended to become part of the real estate.

Based upon the factual representations made, when CLIENT enters into a contractual agreement with its customers to install blinds, shutters, roman shades and cornice boards as represented, that agreement constitutes a construction contract. The Use Tax base in these transactions is CLIENT's cost price of the tangible personal property incorporated into the customer's real estate. Please be advised that the Department is reviewing its regulation regarding the installation of window blinds and shades. Therefore, while we currently treat window treatments installed as described in your letter as permanently installed, this is likely to change.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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